

## **PSJ9 Exh 28**

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE NORTHERN DISTRICT OF OHIO  
3           EASTERN DIVISION  
4                   -   -   -  
5

6           IN RE:    NATIONAL                   :   HON. DAN A.  
7           PRESCRIPTION OPIATE               :   POLSTER  
8           LITIGATION                         :     
9   :     
10          APPLIES TO ALL CASES               :   NO.  
11   :   1:17-MD-2804  
12   :     
13   :   

14                   - HIGHLY CONFIDENTIAL -  
15

16          SUBJECT TO FURTHER CONFIDENTIALITY REVIEW  
17                   -   -   -  
18

19                   February 19, 2019  
20                   -   -   -  
21

22                   Videotaped deposition of  
23           MICHAEL DiBELLO, taken pursuant to  
24           notice, was held at the offices of Locke  
          Lord, LLP, 200 Vesey Street, New York,  
          New York, beginning at 10:29 a.m., on the  
          above date, before Michelle L. Gray, a  
          Registered Professional Reporter,  
          Certified Shorthand Reporter, Certified  
          Realtime Reporter, and Notary Public.  
                  -   -   -

                  GOLKOW LITIGATION SERVICES  
                  877.370.3377 ph | 917.591.5672 fax  
                  deps@golkow.com

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 Q. Okay. Her fourth finding,  
10 "Orders that are highlighted as  
11 suspicious are all investigated. Those  
12 that are cleared from suspicious status  
13 are released. Those that are not are  
14 canceled. At the end of each month, two  
15 reports are submitted to the appropriate  
16 field office of the DEA. The first  
17 report includes those pended orders that  
18 were cleared from suspicious status. The  
19 second report reflects those orders that  
20 were deemed suspicious and canceled."

21 Did you understand that that  
22 was the practice through 2005 for pended  
23 and suspicious orders?

24 A. Yes.

1           Q.     Did you understand though in  
2     that practice, that she recommended that  
3     suspicious orders be reported immediately  
4     and not at the end of the month. By  
5     reporting them on a monthly basis at the  
6     end of the month was inconsistent with  
7     the Controlled Substances Act  
8     requirements.

9           MR. McDONALD: Object to the  
10     form.

11           THE WITNESS: In 2005, I  
12     don't recall if that was  
13     inconsistent with the act.

14     BY MR. MIGLIORI:

15           Q.     She finds -- she documents  
16     here the requirement, "The registrant  
17     shall inform the field division office of  
18     the administration in this area of  
19     suspicious orders when discovered by the  
20     registrant."

21                     Her recommendation she  
22     writes, "While HSI has been using the  
23     current reporting process for several  
24     years, it is recommended consideration to

1 be given to filing the suspicious order  
2 for those orders not released from  
3 suspicious status to the DEA  
4 immediately."

5 Do you understand that that  
6 was the recommendation then, that  
7 reporting them at month's end was not  
8 consistent with the requirements of the  
9 Controlled Substances Act?

10           A.     That was her recommendation.

	2019	2020	2021	2022	2023
1	[REDACTED]				
2	[REDACTED]				
3	[REDACTED]				
4	[REDACTED]				
5	[REDACTED]				
6	[REDACTED]				
7	[REDACTED]				
8	[REDACTED]				
9	[REDACTED]				
10	[REDACTED]				
11	[REDACTED]				
12	[REDACTED]				
13	[REDACTED]				
14	[REDACTED]				
15	[REDACTED]				
16	[REDACTED]				
17	[REDACTED]				
18	[REDACTED]				
19	[REDACTED]				
20	[REDACTED]				
21	[REDACTED]				
22	[REDACTED]				
23	[REDACTED]				
24	[REDACTED]				
25	[REDACTED]				
26	[REDACTED]				
27	[REDACTED]				
28	[REDACTED]				
29	[REDACTED]				
30	[REDACTED]				
31	[REDACTED]				
32	[REDACTED]				
33	[REDACTED]				
34	[REDACTED]				
35	[REDACTED]				
36	[REDACTED]				
37	[REDACTED]				
38	[REDACTED]				
39	[REDACTED]				
40	[REDACTED]				
41	[REDACTED]				
42	[REDACTED]				
43	[REDACTED]				
44	[REDACTED]				
45	[REDACTED]				
46	[REDACTED]				
47	[REDACTED]				
48	[REDACTED]				
49	[REDACTED]				
50	[REDACTED]				
51	[REDACTED]				
52	[REDACTED]				
53	[REDACTED]				
54	[REDACTED]				
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56	[REDACTED]				
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58	[REDACTED]				
59	[REDACTED]				
60	[REDACTED]				
61	[REDACTED]				
62	[REDACTED]				
63	[REDACTED]				
64	[REDACTED]				

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12 Q. Well, we just went  
13 through -- I don't want to go through  
14 them again. But we just went through  
15 Buzzeo's findings in 2005, and it wasn't  
16 picking up that it needed -- there needed  
17 to be a new review of how to check orders

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■			[REDACTED]
■			[REDACTED]
■		■	[REDACTED]
■		■	[REDACTED]
■			[REDACTED] [REDACTED]
■			[REDACTED]
■			[REDACTED]
■			[REDACTED]
■		■	[REDACTED]
■		■	[REDACTED]
■		■	[REDACTED]
■		■	[REDACTED]
■		■	[REDACTED]
■		■	[REDACTED]
■			[REDACTED]
■			[REDACTED]
■		■	[REDACTED]
■		■	[REDACTED]
■			[REDACTED]
■		■	[REDACTED]
■		■	[REDACTED]
■			[REDACTED]
■			[REDACTED]
■			[REDACTED]
■			[REDACTED]
■			[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

9 Q. So in 2011, when an order --  
10 I'll go back to Page 2 for a second.

11 When an order is pended, because of a  
12 deviation in size, frequency or pattern,  
13 by this procedure the DEA isn't notified  
14 immediately as of February of 2011?

15 A. The order is -- is pended  
16 here. It's not deemed to be suspicious.

17 Q. All right. But what we saw  
18 in the early documents that a suspicious  
19 order is one that is a deviation in size,  
20 frequency, and pattern.

21 A. Right.

22 Q. And that once pended, it  
23 needs to be reported, as Buzzeo stated in  
24 2005, it needs to be reported



1 immediately, correct?

2 MR. McDONALD: Object to the  
3 form. Mischaracterizes the  
4 document.

5 BY MR. MIGLIORI:

6 Q. Not -- not at the end of the  
7 month, correct?

8 MR. McDONALD: Object to the  
9 form. Mischaracterizes the  
10 document and the testimony. That  
11 is not what the document said.

12 THE WITNESS: The order is  
13 pending here. That doesn't mean  
14 it's suspicious. There's a whole  
15 review process here, we just went  
16 through.

17 BY MR. MIGLIORI:

18 Q. I'm going to -- let me give  
19 you a hypothetical so we're not  
20 confusing.

21 If an order is a deviation  
22 in size, it is a pending order in Henry  
23 Schein's system, correct?

24 A. If it's a deviation in size.

1 Q. Yes?

2 A. Yes.

3 Q. An order that is a deviation  
4 in size, by definition under the CSA, is  
5 suspicious, correct?

6 MR. McDONALD: Object to the  
7 form.

8 THE WITNESS: Not  
9 necessarily.

10 BY MR. MIGLIORI:

11 Q. All right. Well, you  
12 actually had a document where you said  
13 exactly that, that we just referred to  
14 earlier.

15 You're saying that a  
16 deviation in size is not a suspicious  
17 order?

18 A. Potential, potentially.  
19 Potential. It could be. That's the  
20 review process that we're doing here.

21 Q. So in Schein's system, in  
22 February of 2011, Schein is not reporting  
23 immediately a deviation in size of order  
24 from prior purchasing history to the DEA

<sup>1</sup> upon discovery. Is that true?

2           A.       We were reporting suspicious  
3       orders.

4                   Our definition of a  
5       suspicious order, after the review is  
6       conducted and deemed to be suspicious,  
7       that's when it was reported immediately.

8           Q.       So this flowchart is  
9       accurate, that you would not have told  
10       DEA about this until you got to this last  
11       step here of it being --

12                   A.       Deemed suspicious.

The diagram illustrates a 12-step process flow. Each step consists of a small square icon and a text box. The text is redacted with black bars. The steps are arranged in a descending sequence from top-left to bottom-right.

- Step 1: [Redacted]
- Step 2: [Redacted]
- Step 3: [Redacted]
- Step 4: [Redacted]
- Step 5: [Redacted]
- Step 6: [Redacted]
- Step 7: [Redacted]
- Step 8: [Redacted]
- Step 9: [Redacted]
- Step 10: [Redacted]
- Step 11: [Redacted]
- Step 12: [Redacted]